

May 10, 2019

Mr. Kevin T. Garvey
D. S. Thaler & Associates, LLC
7115 Ambassador Road
Baltimore, MD 21244

Re: Red Maple Place
Forest Conservation Variance
Tracking #05-18-2874

Dear Mr. Garvey:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on December 11, 2018. The request seeks a variance to remove two specimen trees in order to construct a multi-family residential building with associated parking and stormwater management on a 1.5-acre, partially wooded property. The specimen trees to be removed are a 33-inch DBH black locust and a 34-inch red maple, both in poor condition. There are four other specimen trees on the property that will not be impacted by the development and will be retained in a Forest Buffer and Forest Conservation Easement. All of the specimen trees onsite are within forest.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The petitioner is seeking to construct a multi-family residential building with associated parking areas and stormwater management. Given that a much smaller building could be developed that avoids impacting any specimen trees, denying this variance would not deprive the petitioner of all beneficial use of the property; however, it would severely limit its use. Nevertheless, we find that this criterion has not been met.

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The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the location of the two specimen trees relative to the buildable area rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of multi-family and commercial buildings similar to that proposed on the subject property. As such, granting the variance to allow the construction of the proposed apartment building will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Although the project will impact area that would be Forest Buffer Easement, those impacts will be adequately mitigated both on and offsite in accordance with the variance to the Forest Buffer Law granted on May 9, 2019. Moreover, no direct impacts to any wetlands or streams are proposed. Finally, 1.7 of the 2.0 acres of forest will be protected onsite in a Forest Buffer and Forest Conservation Easement. As a result, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance arises from the presence of specimen trees onsite. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although two specimen trees are to be removed, 1.7 of the 2.0 acres of forest, which includes the other four specimen trees onsite, will be protected onsite in a Forest Buffer and Forest Conservation Easement to be recorded in Baltimore County Land Records along with its Declaration of Protective Covenants. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent on the following conditions:

1. The following note must be on all subsequent plans for this development project:

“A variance was granted on May 10, 2019 by the Baltimore County Department of Environmental Protection & Sustainability to remove two specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including retaining forest in excess of the 0.7-acre break-even point in a Forest Buffer and Forest Conservation Easement and protecting the other four specimen trees onsite.”

2. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.
3. Mitigation for the removal of the specimen trees is not required, given that they are in poor condition and in forest to be mitigated in accordance with Sections 33-6-111 and 33-6-112 of the Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/lbe

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c. Ms. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name